

FILED

NOT FOR PUBLICATION

JUL 26 2006

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

HERMALINDA CANO-FAJARDO; et al.,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74581

Agency Nos. A78-680-324
A78-325-643

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Hermalinda Cano-Fajardo, and her husband, Gregorio Gomez-Fajardo,
both natives and citizens of Guatemala, petition for review of the Board of
Immigration Appeals' ("BIA") summary affirmance of an Immigration Judge's

* This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral
argument. *See* Fed. R. App. P. 34(a)(2).

(“IJ”) denial of their application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”).

We lack jurisdiction over petitioners’ CAT claim because they failed to raise the claim before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004). We therefore dismiss the CAT claim.

We have jurisdiction under 8 U.S.C. § 1252 over petitioners’ remaining claims. We review the IJ’s decision for substantial evidence, *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992), and deny the petition for review.

Substantial evidence supports the IJ’s decision that petitioners failed to establish past persecution or a well-founded fear of future persecution based on an enumerated ground. Because there is nothing in the record to suggest that an attack on petitioners’ son by unidentified assailants occurred on account of an enumerated ground, petitioners’ asylum claim fails. *See id.*

Substantial evidence also supports the IJ’s conclusion that petitioners failed to establish withholding of removal because they did not show that it is more likely than not that they will be subject to persecution based on an enumerated ground. *See id.* at 483-84.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.